Decimarum & Oblationum Tabula.

A

Tithing-Table.

OR,

Table of *Tithes* and *Oblations*, according to the Eccleſiaſtical Laws and ordinances eſtabliſhed in the Church of *ENGLAND*, now newly reduced into a Book.

Containing as well the very Letter of the Law under which theſe Rights be ſeverally compriſed, together with ſuch Queſtions of Tithing, and their Reſolutions by the Laws Canon, Civil, and approved Doctors opinions of the ſame, as be ordinarily moved, and which do often prove to Controverſies herein.

As alſo a Brief and ſummary Declaration of *Compoſition*, *Tranſaction*, *Cuſtom*, *Preſcription*, *Priviledge*, And how they prevail in Tithing.

Annexed hereunto, ſummarily, ſuch Statute-Laws of the Land concerning theſe Rights, as have been herein Authoriſed, and now do remain in their Force accordingly. To the Eaſie and Plain Inſtructions of all Subjects or Lay, whether in theſe Rights to demand them, or bounden to perform the ſame.

Compiled by W. C. *Bach. of the Civil-Law.*

Hallow thy Tithes unto God with gladneſs, Eccleſ. 25.
So ſhall thy Barns be filled with plenteouſneſs, amd thy preſſes flow over with ſweet Wine. Prov. 3.

LONDON,
Printed for *R. Scot*, *T. Baſſet*, *J. Wright*, *R. Chiſwell*, 1676.

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THE
PREFACE

THE Canon *and* Civil Laws (*Christian Reader,*) *since first King* Henry, *of happy Memory, the Eighth, dismembred their bodies,* [a] *and restored to the Diadem of the Land (over the State Ecclesiastical) the Ancient Jurisdiction of the Crown, they have and do lie hidden, such of them as King* Henry *then continued, and King* Edward [b] *that succeeded him, Intituled in his Reign the Kings, and afterwards were the late Queens deceased, and as they be now termed,* The Kings Ecclesiastical Laws, (*the former Statutes revived by Her*

[a] 25. Hen. 8. 19.

[b] 2. Ed. 6. 13.

e 1. Eliz. i.

Majeſty[e] *in the firſt year of her Reign) they have thoſe Laws, and do lie hidden in manifold, dark, and dangerous corners in practiſe only familiar in conſiſtories, and their knowledge to the Countries obſcure: hence are the manifold untimely cuſtoms and Preſcriptions that we have: I inveigh not againſt them, neither Cuſtom not preſcription, that be perfect now, and in their perfect being; I would not be taken, or rather miſtaken, ſo; but they be weeds in their growing and all their ingendring time, wherein (only) they give place to prevention: they be Laws of themſelves (in their ripeneſs) inviolable*[d]. *If therefore ſome inſight in theſe Laws, and knowledge ſucceeding this long obſcurity, may work another effect in the time to come, none can ſay uprightly now that he is, may be, or his Poſterity after him (if not benefitted) damnified thereby: haply I may be charged (in tranſlating) to have damnified the Laws. I have ſhadowed (I confeſs) their first*

d Glo. & D.D. i C. vigilanti de præſcrip.

first and Original grace; ſuch beauty have they, and Elegancy too, in the Latine Tongue: but I write to Engliſh-men, *and ſuch as not ſo much affect to hear of the beauty, as they be deſirous to underſtand the benefit of their Laws: for ſuch I have framed this* Tithing-Table, *and repleniſhed (as my Slender skill would ſerve) the ſame with neceſſary, diſperſed, and ſcattered Laws, not hurtful, conſidered as they be delivered, nor prejudicial to the Royal Prerogative, nor repugnant to the Laws, Statutes, nor Cuſtoms of this Land. Tithes (by ſale) be turned into chattels, and made of ſpiritual, temporal things: in debate (of the right of Patronage) in Tithes, and exceeding the fourth part of the value of the Church[f], where great Wood is demanded in the name of* Sylva Cædua[g], *in Tithes, Oblations, where there is any ſtate of inheritance[h], and where they be demanded, and be neither due nor accuſtomed[i], the Kings prohibition doth lie in all theſe caſes*

[f] Art. cler. 9. Ed. 2. 1.
[g] 9. Ed. 2. 34 E. 1. 1. de conjunct. in ſco atis.
[h] 45. Ed. 3. 3.
[i] 3. Hen. 8. 7. 13. Ed. 1. circ. agat.

caſes and no conſultation: otherwiſe, and without ſuch temporal mixtures, prohibition hath no place [k]*: but the Judge Eccleſiaſtical hath power to proceed notwithſtanding the Kings prohibition* [l]*. Conceiving them therefore* (Chriſtian Reader) *as they be meant, and mentioned, to be preſented unto thee,* Viz. *as they be meerly Spiritual Tithes and Oblations, and without any temporal mixture, thou ſhalt not miſconſtrue the Author, nor deceive thy ſelf Farewel.*

The Reader's (ever) in the Lord,

W. C.

k Fitz. de natura brevium Fol. 50. de conſultatione. l 9 Ed 2. circumſpecte agatis. 13. Ed.

These Books following are to be ſold by *R. Scot, T. Baſſet, J. Wright, R. Chiſwell.*

Hookers Works. Folio.
Anderſon's Reports, Fol.
Bevis of Hampton, *Quarto.*
Moſes and Aaron.
Counter-Scuffle.
Tithing Table.
Hobbs againſt the *Geometticians* —— *De mirabilis Pecci.*
7. *Champions.*
Mandivels Travels.
Scidley Enchiridion, Octa.
Erra Pater.
Geſta Romanorum.
Dr. *Anderſon de Jure.*
Ogylbys Virg. Engliſhed. 12s.
Butlers Rhetorick.
Elegantiæ Poeticæ.
Lucians Dialogues gr. lat.
Helps to *Diſcourſe.*
Mothers Bleſſing.

A brief Collection of the Letter and Terms of the Law, with their ſeveral Expoſitions in Engliſh: and of all ſuch queſtions of Tithing which be mentioned and contained within the body of this Table, whereby every Tithable thing and queſtion that is moved and anſwered of the ſame is readily found.

The Firſt Queſtion,

DEcima de {*Frugibus*, i. Of Harveſt Fruits, Sown, Mown, Reaped, Gathered, Bound, or Looſe, in Heap, Shock or Sheaf.

1 When they be Tithable, and ſuch other Predial Tithes, whether it be lawful to the owner to diſpoſe any manner of way of any part of the fruits before diviſion be made, and the tenth part be ſevered from the Nine parts?

2 If a Stranger ſhall preſcribe Tithes in another Pariſh, and there ſhall happen afterwards barren and waſte grounds to be tilled, whether the ſtranger that preſcribeth, or the Church where the grounds do lie, ſhall reap the Tithes?

3 If one ſhall have right of Tithe in a Wood, and that

Wood become afterwards Arable ground, whether his Right continueth in the Corn?

The ſecond Queſtion.

Decima de
- *Sylvis cæduis*, i. Of Woods felled and preſerv'd to grow again.
- *Lignis*, i. Of Wood not in uſe, nor apt for Timber but for firing.
- *Thenitiis agrorum*, Of Trees planted for fencing of Grounds, in Fields, Paſtures, and hedg-rows.
- *Turviis*, i. Of Turves growing in fenny & mooriſh ſoils as in the Iſle of *Ely*.

1 Wood of twenty years growth and upwards. whether it be Tithable or not? And what of Loppings of Timber Trees?

2 When Woods be felled and ſold, who ſhall anſwer the Tithe? the buyer or the ſeller?

3 If the inheritance of a Wood be ſold, that is in arrearages for Tithe, whom the Parſon may implead?

4 Turves, amongſt what tithes they be reckoned?

The Third Queſtion.

Decima de
- *Paſturis*, i. Of Paſture Grounds.

1 If they be fed, how the Tithes ſhall be anſwered?

The Fourth Queſtion.

Decima de
- *Fœnis*, i. Of Hay.

1 Hay

1 Hay, of what places? and of what Tithe it is?

The Fifth Queſtion.

Decima de { *Lana*, i. Of Wool.

1 Whether the Sheep of Sons or Daughters be Tithable (or not) with their Fathers Flocks wherein they do go?

2 Where ſheep be removed from one Pariſh to another, how the Tithe is divided by rate and proportion of time?

3 If ſtrange Sheep be brought to another Pariſh and there be Clipped or ſhorn, how they be Tithable there?

The Sixth Queſtion

Decima de {
Agnis, i. Of Lambs.
Vitulis, i. Of Calves.
Porcellis, i. Of Piggs.
Pullis, i. Of Colts.

1 Whether the Parſon may expect his Lamb (the next year following) if the Pariſhioners number in any one year amounteth not to ten? And what if he faileth then?

2 When Ewes be removed, and other ſuch Cattel and Beaſts from one Pariſh to another, how the ſeveral *Churches* be intereſted in the Tithe of their Lambs, and ſuch other increaſe?

3 Of Lamb, Calf, Kid, Colt, Pig, &c. and when is their Tithable time?

The Seventh Queſtion.

Decima De { *Lacte*, i, Of Milk. / *Caſeo*, i, Of Cheeſe.

1 Milk and Cheeſe how? And when they be Tithable?
2 If Cattel feed in one Pariſh and couch in another, how the profits be tithed?
3 Where Cheeſe is Tithable, and the numberof Cattel ſo ſmall that none can be made; how the tithe ſhall be anſwered for their ſmall proportion?
4 Where Milk of ſheep is tithed in kind, how they be tithable (for their paſture) in the Winter, when they do yield no ſuch profit?

The Eighth Queſtion.

Decima De { *Fructibus Arborum*, i. Of fruits of Trees.

1 Of Apples, and other ſuch fruits of Trees, what of their tithable time?

The Ninth Queſtion.

Decima de { *Seminibus*, i. Of Seeds: Hemp, Flax, Onions, Rape, and ſuch like. / *Herbis*, i. Of Pot-Herbs. / *Curtilagiis*, i. Of places adjoyning to Manſion Houſes, applyed to Seeds and Herbs.

1 Of Seeds and Herbs, what manner of Tithes they be?

The

The Tenth Question.

Decima de { *Pannagiis Sylvarum*, i. Of Maſt or Beech or Oak, or ſuch Like.

1 Of Maſt, what, when it is given? and what, when it is ſold?

The Eleventh Question.

Decima de {
Molendinis, i. Of Mills, forced by Wind, Water, &c.
Vivariis, i. Of Parks, Warrens, Pools,
Beſtiis guarenarum, i. Ponds, &c. Of wild Beaſts under cuſtody, &c.
Columbariis, i. Of Dove-cotes, or houſes.
Apibus, i. Of Bees.
}

1 What manner of Tithes they be? and how they be tithable?

The Twelfth Question.

Decima de {
Aucupiis, i. Of Fowlings.
Venationibus, i Of Huntings.
Piſcationibus, . Of Fiſhings.
}

1 Beaſts, Fiſhes, Fowls, how (diverſly) they be tithed. (diverſly) conſidered?

The

The Thirteenth Queſtion.

Decima de { *Cygnis*, i. Of Swans. / *Ancis*, i. Of Geeſe

1 Of Swans, Geeſe, Ducks, and how they be conſidered of.

The Fourteenth Queſtion.

Decima de { *Ovis*, i. Of Eggs.

1 Of Eggs, where Tithes be yielded, whether Chickens be Tithable there?

The Fifteenth Queſtion.

Decima de { *Artificiis*, i. Of Crafts, and manual Occupations. / *Negotiationibus* Of trades by wares, Merchandiſe, &c.

1 Of perſonal Tithes, what time, place, and perſons be required in them; and of whom the Church is forbidden to receive either perſonal Tithe, or Oblation:

The Firſt Queſtion.

DEcima de { *Frugibus*, i. Of Harveſt fruits, Sown, Mown, Reaped, Gathered, Bound or Looſe, in Heap, Shock or Sheaf.

1 When

1 When they be Tithable, and ſuch other predial Tithes, whether it be lawful to the owner to diſpoſe any manner of way of any part of the fruits before diviſion be made, and the Tenth part be ſevered from the Nine parts?

2 If a ſtranger ſhall preſcribe Tithes in another Pariſh, and there ſhall happen afterwards barren and waſte grounds to be tilled, whether the ſtranger that preſcribeth, or the Church where the grounds do lie, ſhall reap the Tithes?

3 If one ſhall have right of Tithe in a Wood, and that wood become afterwards Arable Ground, whether his right continueth in the Corn?

Queſtions of Tithing, and their reſolutions.

The firſt Queſtion.

PAriſhioners out of their Harveſt-fruits, ſpecified under the word *Frugibus*, (before their Tithes aſſigned of the ſame) diminiſh their Fruits, ſome one way, ſome another: admit to Godly, or Prophane uſes: or (as their manner hath been) to the ſatisfying therein their Labourers their Wages. The queſtion is, whether this be lawful? It is anſwered. A fraud unto the Church: For his allowance (If any ſuch be) not otherwiſe ought to be made than forth of the Nine parts: and the reaſon is, *Decima debet ſolvi ſine diminutione, &c.* Tithe muſt be paid without any diminiſhing *a*.

2 The Parſon of the Rectory of *A.* (*Jure præſcriptionis*) *i.* by Right of Preſcription, hath intereſt in and to the predial Tithes of the Pariſh Church of *B*, Where there be converted (into Tillage) divers barren, heath, and

a c. Cum homines de decim. Glo. c. erroris damnabilis Conſt. pecu. Aug. de dec. ver error calculi.

and wait grounds, that never before yielded any profit to the Church : The queſtion is, how of theſe Tithes, and which of the Church ſhall have them? It is anſwered, that the Pariſh Churches of *B.* Shall have theſe Tithes, becauſe they be *Decimæ novalium*, *i.* ariſing of ſuch grounds that never were manured, nor yielded before any profit at all to the Church : and the reaſon is, by the foundation of every Church the Tithes in the general of that and every pariſh, are due to their own proper and peculiar Church *b.* Now, for as much as the Church of *A.* could never before be in poſſeſſion of the Tithes of theſe waſt grounds, becauſe they never were in being *c*, and that the Law is, that *Tantum preſcriptum eſt, quantum eſt poſſeſſum, & non plus*, *i.* So much (and no more) in preſcription, than in poſſeſſion *d*, And again, in that preſcription is not extended *ad futura*, *i.* It reacheth not unto Profits of Tithable grounds to come *e*; *Summæ æquitatis eſt*, &c. i. The premiſes conſidered, it ſtandeth with great equity, in this caſe, that the Church of *B.* ſhould reap and receive theſe Tithes *f*.

b c. Cum contingat. ubi glo. & D. D. cod.

c l; Sine poſſeſſione ff. de uſu cap.

d l. Quod meo ſæt. fi: ff. de acquir. poſſeſ cap. Auditis de præſcript.

e Pan. in ult. notabili. in. d c. Cum. contingat.

f Hiſt. Jo. And in d. c. Cum contingat.

3 But note, it is otherwiſe where one ſhall be in poſſeſſion of the Tithe of Corn, or of Paſture, or of Wood, or any prædial Tithes whatſoever ariſing in the Grounds wherein he preſcribeth, howbeit afterwards there be planted and ſet or ſown in the ſame any ſtrange Plant, Seed, or Herb, that never grew before in theſe Grounds. For example : Millet is ſown, or Saffron, where Corn hath been ſown uſually and ever before, and as the manner is in ſome part of this Land to ſow in their Paſture-grounds the Herb that is called *Glaſtum* or *Iſatis*, *Cæſar* writeth of the old *Britains* that they uſed with this Herb to ſmear their faces, to the end to ſeem terrible to their enemies in war : We call

call it in English Wadde or Woad. Again Apples, or Nuts, be newly planted where never they grew before: and ſo *Ex nemoribus*, *i.* of Woods that be converted to arable Grounds: the Tithes in all theſe caſes be payable as before they were of the former fruits, and to whom the former fruits were tithable before, namely, to the Parſon or Church that preſcribeth, and the reaſon is, *viz. Præſcriptio eſt realis cenſenda*, *i. terram concernens*, *non ſpeciem fructuum perceptorum. i.* Preſcription is real, that is to ſay, reſpecting not the new or never-tithed fruits, but the tithable Grounds that bring them forth *g*. In reſpect whereof, that is, of the Grounds, the Tithes whereof forepaſſed have been (without diſcontinuance or other interruption,) continued and poſſeſſed, it is thus affirmed (in theſe Caſes) of preſcription, *viz. Præſcriptio extenditur ad particularitatem juris apprehenſi: ſub unico jure ut univerſali*, *i.* Preſcription is extended to every particularity of right apprehended, as it were, under that particular, as general *h*. Otherwiſe it ſhould be *in poteſtate ſerentis*, *i.* in the owners power (changing the fruits) to prevent anothers right in the Tithes of his certain, known, and tithable Grounds: contrary to the Rule of the Law, *viz. Id quod noſtrum eſt, ſine facto noſtro a nobis avelli non poteſt. i.* that which is mine cannot (without my fact) be taken from me *i*. Look the Statute *De novalibus*, of Barren, Heath, and waſte ground, 2 *Ed.* 6. 13. And look the Statute for predial Tithes, and tithable places, 2 *Ed.* 6. 13.

g Acha in c. Cum in tua. de deci. & Ant. But in d. c. Cum in tus. eod.

h Ant. But. in c. præal.

i ff. de reg. jur.

The Second Queſtion.

Decima de
- *Sylvis ceduis*, i. Of Woods fel'd, and preſerved to grow again.
- *Lignis*, i. Of Wood not In uſe, nor apt for Timber, but for firing.
- *Thenitiis*, i. Of trees planted for fencing of grounds, in Fields, Paſture, and hedge-rows.
- *agrorum.*
- *Turvis*, i. Of Turves growing in Fenniſh and mooriſh ſoils, as in the Iſle of *Ely.*

1 Wood of twenty years growth and upwards, whether it be tithable or not? And what of Loppings of timber Trees?
2 When Woods be felled and ſold, who ſhall anſwer the Tithe? the buyer or the ſeller?
3 If the inheritance of a Wood be ſold, that is in arrerages for Tithe, whom the Parſon may implead?
4 Turves amongſt what Tithes they be reckoned?

The Second Queſtion.

1 OF Woods and Wood, contained and ſpecified under the Words *Sylvis Cæduis*, *Lignis*, *Thenitiis agrorum*, ſome of them exceed the growth of twenty Years, and ſome of them not felled within the memory of man, peradventure not of an hundred or two of years: there groweth a queſtion of ſuch Woods for the Tithes of the ſame: It ſhould ſeem, the Pariſhioner herein may plead for the one (againſt the Parſon) the Statute of *Sylva Cædua*, that exempteth Wood of twenty years growth and upwards, from the payments of Tithes: and (for the other) both the Statute and preſcription, in that the Tithes therein

therein were never performed: interpreting the Statute no further than the ſtatute explaineth it ſelf, it is anſwered by the Canons alledged, ſo far forth (with Proteſtation) and no further, than the Statute ſhall permit, that Wood not in uſe nor apt for Timber is Tithable, body or bough, felled or Lopped *k*. As for preſcription it is Anſwered *Præſcriptio locum habere non poteſt, ubi ille cui jus competit, agere non poteſt, cum ceſſet materia de qua experiatur, i.* Preſcription hath no place, where the intereſſed (in his right) can make no demand, the matter ceaſing whereupon he ſhould work: For example, Of Wood never cut, the Tithe could never be demanded *l*. But whether the Lopping or boughs of ſuch Trees the which the common Laws of the Realm account Timber, be Tithable or not, is not yet decided by that Law.

k c. Quam. quam. provin. Ang. eo. ubi. glo in ver. exicis.

l Gloſſ. cap. Sarcta eccleſia provin. ang. eo. ver. arborum ad hoc. l. arboribus ff. de uſufr.

2 It is a Queſtion, when Woods ſo felled be ſold, who ſhall anſwer the Tithes, the Buyer or the Seller? It is anſwered, the buyer *m* ſhall anſwer the Tithe: and the reaſon is, *Decima ſequitur fructus, & cum onere fructuum decimæ transferuntur in alterum, i.* Tithe doth follow the Fruits, and Fruits be tranſlated into anothers right together with the burthen of Tithes *n*.

m Ext de decim c. Paſtoralis.

n c. Preal. eod.

3 Where the inheritance of a Wood is ſold, the Tithes whereof for certain years forepaſſed, by the Seller have been detained and wrongfully ſubſtracted from the Church, it is a queſtion whom the Parſon may implead: It is holden, he may implead the one or the other at his own choice *o*, but he can recover but of one *p*. But by the Statutes of the Land, the Seller only, in this caſe, ſhall be impleaded, and ſued unto treble Damages, 2 *Edward* 6. And not the buyer who took not the Tithe away.

o Per. d. c. ancha & D. D. o. cum homines eod.

p Ar. ad hoc de re jud. c. Bona fideli. 6. Gle. provin. Ang. de decim ver. aſportant

4 *De Turvis, i.* of Turves, they be Tithable, and comprehended under the word *Lignis*, becauſe they be ſo applyed, that is, for firing *q*, and Reckoned in the number and amongſt the predial Tithes.

q ff De lig 3. l. Ligni Sect. ligiorum verb. mirum.

The Third Queſtion.

Decima de { *Paſturis*, 1. Of Paſture-grounds.
1 If they be fed, how the Tithe ſhall be anſwered?

The Third Queſtion.

1 OF Paſture Grounds, when they be fed, it is a queſtion how the tithes ſhall be anſwered. It muſt be conſidered whoſe the Grounds be, whether the owners of the Cattel that fed them, or a ſtrangers of another pariſh. In the firſt caſe, if the Cattel be ſuch that yield profit to the Church, the Tithe is ſatisfied in the fruits of the beaſts *r*. In the other caſe, it muſt be conſidered of the ſtranger, whether he ſelleth or giveth frankly to the owner of the cattel, the Paſturage of his grounds: the ſtranger, if he ſell it, is anſwerable for the tenth peny: the Pariſhioner, if freely he receiveth it, is anſwerable for the eſtimation *ſ*. But note, the eſtimation ſhall not be anſwered, but where the Grounds with beaſts be fed, *Nullam Eccleſiæ utilitatem alias, &c. i.* yielding otherwiſe no profit at all to the Church: Of which ſort be Horſes, Oxen, and ſuch other barren beaſts. In other profitable cattel, the Tithe is extended (as aforeſaid) to be anſwered in the Fruits *t*. But note, that generally the occupier of the paſture is to pay the tithe, and ſo is the cuſtom.

r. Inno. ext. de decim. c. commiſſum.

ſ. Preal. eod

t Juxt. notat per. Inno. ut ſup glo. ver. dividenda prov. an. co.

The

The Fourth Queſtion.

Decima de {*Fœnis*, i. Of Hay.

1 Hay, of what places? and what tithe it is?

The Fourth Queſtion.

DE *Fœnis*, *i.* of Hay, according to the expoſition of the word, the tithe is payable, *viz.* of the Graſs withered or green, perceived and taken in Meadow, Paſture, great or ſmall, or in other place or places, or Angles, (ſo within the limits of the Pariſh) whereſoever *u*. Queſtion hath been moved of this Tithe to this effect, that is to ſay, whether it be predial or perſonal? It is anſwered to be predial, *x*. for howbeit the induſtry and labour of the perſon may ſeem and be alledged more to prevail (as they term it) in the making thereof than the nature of the ground, yet in that it is perceived of the ground, and gathered of, and from a place certain, in ſome one or other known, certain, and limited Pariſh, it is tithable as other predial tithes be, *y*. that is, to that Pariſh Church where the grounds do lie: Without Deduction of charges.

u Prov. ang. c. quoniam propter volumus.

x Ancha. cap. pervenit. eod.

y Ad hoc epaſtoralis ext. eod.

The Eighth Queſtion.

Decima de {*Lana*, i. Of Wooll.

1 Whether the Sheep of Sons and Daughters be tithable (or not) with their Fathers Flocks wherein they do go?

1 Where

2 Where Sheep be removed from one pariſh to another, how the Tithe is divided by rate and proportion of time?

3 If ſtrange ſheep be brought to another Pariſh and there be clipped and ſhorn, how they be tithable there?

The Fifth Queſtion.

1 OF profits and increaſe of ſuch profitable Beaſts before mentioned, and ſpecified in particular under the words *Lana*, *Agnis*, queſtion is moved to this effect, there be in one Family divers perſons having to the number of three, five, ſix, eight, or ten Lambs or fleeces of Wool more or leſs, their ſheep be depaſtured, and ſo be reputed part and parcel of the flocks wherein they walk, couch and do feed: The queſtion is of their Tithes, Whether they be Tithable with the flocks, or in their ſeveral parcels? It is anſwered, in their ſeveral parcels; and the Reaſon is, *Animalia quæ gregibus alienis admixta ſunt, remanent eorum propria non quorum ſunt greges, ſed quorum ſunt animalia*: *i.* Beaſts intermingled with other mens flocks, do remain notwithſtanding proper and peculiar unto thoſe, not whoſe be the flocks, but whoſe be the Beaſts, *z.* Howbeit in Countries where perſons, ſuch as Sons, and Daughters, in their Fathers power, government, maintenance, and finding, ſhall have ſuch Beaſts or cattel intended in Law, and counted *in bonis profectitio & adventitio*, *i.* accrewing and growing by their Fathers or friends by the Mothers ſide, by gift, procurement, or otherwiſe, in which Beaſts their Fathers are intereſſed, in the uſe and fruits, the bare property remaining to the Children, the Tithes of theſe Beaſts ſhall be reckoned with their Fathers, *a*, and not in their ſeveral parcels, and the reaſon is, *Vt ipſarum rerum quæ in fructu ſunt & patri adquiruntur, pater ſolvat decimam*, &c. *i.* of things in increaſe and procured to the Father,

z C. Cle. c.

a Arg. ad hoc. ff. per quas perſonas nobis. *Steff.* 1.

So

So ſhall the Father be anſwerable for the Tithe, *b* the property notwithſtanding reſerved to him or her to whom it belongeth, his Son or Daughter. But for that *Patria Poteſtas*, *i.* that Legal power and prerogative of Fathers, it is not in uſe; neither yet *Profectitium* nor *Adventitium peculium* are known in *England*; the Beaſts of Sons and Daughters here mentioned (in reſpect of their Tithe) ſhall not be reckoned with their Fathers Cattel, but as the cattel of other ſtrangers: and what is given by the Father to the Son or to the Daughter, is their own, except the Father by expreſs words ſhall reſerve the fruits of ſuch cattel ſo given, to himſelf.

b Glou. prov ang. de dec. ver. decima anæ.

2 Where ſuch cattel be removed from Pariſh to Pariſh, and queſtion be made, what proportion of the Tithes is due to each Pariſh, the cuſtom of the place muſt be obſerved: otherwiſe the Law is, *viz. Quælibet Eccleſia pro rata temporis portione decimas percipiet*, *i.* Every Church ſhall receive its Tithes by rate and proportion of time: but the queſtion is, of what ſpace this rate and proportion is meant? It is anſwered, of thirty dayes, and ſo to be rated by Thirties from thirty to Thirty, *Minori triginta Dierum ſpacio in rata temporis minime computando*, *i.* under or leſs than the ſpace of thirty dayes not to be counted in rate and proportion of time *c*: for example, the Pariſhioner hath fourty ſheep which yield him at ſhearing day fourſcore pounds of Wooll: that Church is intereſted intirely in the Tithe, in whoſe Pariſh the whole year they couched and depaſtured: that Church in the half, that is, in the Tithe of fourty pounds where the half year they couched and depaſtured; that church in twenty pounds where they couched three months, and depaſtured: and ſo ratably four months, five months, more or leſs accordingly: and that Church in whoſe Pariſh they couched and depaſtured but one month, that is thirty dayes, but in the

c Text. pro. vin. ang. ca. quoniam ut audivimus. eodem.

the time of the twelfth part thereof, that is, of the whole, Fourſcore pounds; but the tenth of ſix pounds and half, and under thirty dayes as afore is ſaid, no allowance at all *d*. But note, if the whole time they couch in one Pariſh, and depaſture in another, the Tithe ſhall be divided *e*.

d d.c.ver ſed ſi oves.

e Sed. ſi vero. conſt. præal,

3 If peradventure they come from a ſtrange and unknown place to any Pariſh to be clipped or ſhorn, there the Tithe muſt be paid, except it may appear the ſame to be ſatisfied to the Church whence they came *f*.

f Sed. & ſi o. ves conſt. eod

The Sixth Queſtion.

Decima de
- *Agnis*, i. Of Lambs.
- *Vitulis*, i. Of Calves.
- *Porcellis*, i. Of Piggs.
- *Pullis*, i. Of Colts.

1 Whether the Parſon may expect his Lamb (the next year following) if the Pariſhioners number in any one year amounteth not to ten? And what, if he faileth them?

2 When Ewes be removed, and other ſuch cattel and Beaſts from one Pariſh to another, how the ſeveral Churches be intereſted in the Tithe of their Lambs, and ſuch other increaſe.

3 Of

3 Of Lamb, Calf, Kid, Colt, Pigg, &c. and when is their Tithable time?

The Sixth Question.

1 FOr Tithes in profitable beasts, the Parson may expect the fall of the tenth the next year following, if the number in any one year amounteth not to ten, according to the text of the constitution *g*, *viz.* *Vel expectet rector usque ad alium annum donec plenarie decimum agnum possit recipere, si maluerit: i.* Or let the Parson (if so he had rather to do) expect another year, till he may fully receive his tenth Lamb. Now it falleth out that the Parson useth his Liberty and refuseth his Lamb at seven, and his half-pence at Six, and the Parishioner the year following hath never a Lamb at all: The question is, how the tithe shall be satisfied? It is answered, (in this case) the Parson hath no remedy in Law, and the reason is, *A principio male eligendo fuit in culpa, ergo in hoc sibi imputetur, i.* He made his choice but ill at the first, which was his own default, and therefore he must blame himself *h*. Yet *Linwood* affirmeth in this case, That in regard of the Church, in respect whereof tithes ought not to be lost, and in regard of the party himself, the owner of the fruits, who without sin cannot detain by any colour their rights from the Church, though the Parson (for his own sake, cannot relieve himself *Jure Actionis, i.* By right of action: yet for the Churches sake *Officium Judicis, i.* The Judg his Office may be desired *i*.

g Text. provin. ang. coquoniam propter decim.

h Arg. ad hoc inst. quod cum eo qui in alt por *sect.* cæterum autem & glo. const prov. præal. verb. possit recipere

i c. verb. const. præal.

2 Ewes be sometimes removed from grounds to grounds, from Parish to Parish, the quest. is; (in this case) of the right of their tithes: It is thus answered, by the text-Law *k viz.* The tithe of Lamb is payable in manner and form as be the tithes of Calves and Colts, and such other like ti-

k c. Quoniam ut audivimus const Provin. ang. *Sect.* agni. eod.

tithable increaſe, mentioned to be Pigg, Kid, &c. of which the Law determineth thus, *viz. Habita ratione ad loca diverſa ubi gignuntur, oriuntur & nutriuntur, & ad moram quam traxerint eiſdem, particulariter decimentur, i.* They be tithable by rate and proportion (particularly) to the ſeveral Churches in whoſe pariſhes they were engendred, brought forth, and nouriſhed: *l* for example, The Ewe goeth five months with her Lamb, they put them together the Male and Female the laſt of *September*: where they coupled they remain one month, they be removed to a ſecond Pariſh, to a third, to a fourth, and to a fifth, where they be depaſtured ſeveral months: in this caſe, *Vnuſquiſque pro tempore ſuo, i.* Every Parſon for his time, *m* that is (the ſeveral times and places conſidered) the ſeveral Churches in the Tithes have ſeveral rights accordingly *n*.

l Ca & *Sect.* præ.

m Glo. c. & *Sect.* præal. verb. particulariter.

n C. &. Sect. præ.

3 And touching the queſtion of their tithable time, it is anſwered thus, *Fœtus ablactatus eſſe debet antequam præſtetur, i.* They muſt be weaned, weanable, or of ſtrength to live without the dam, *o* except cuſtom hath obſerved therein a time certain, the which where ſo it is, there it muſt be continued. Look cuſtom, the 6.

o Rebuff eo. q. 6. un. 30. Inno. hoſt & ali in ca cum

The Seventh Queſtion.

Decima de { *Lacte*, i. Of Milk. / *Caſeo*. i. Of Cheeſe.

1 Milk and Cheeſe how? and when they be Tithable?

2 If

2 If Cattel feed in one Pariſh and couch in another, how the profits be tithed?

3 Where Cheeſe is Tithable, and the number of cattel ſo ſmall that none can be made, how the Tithe ſhall be anſwered for their ſmall proportion?

4 Where Milk of Sheep is Tithed in kind, how they be Tithable (for their Paſture) in the Winter, when they do yield no ſuch profit?

The Seventh Queſtion.

MIlk and Cheeſe, *viz.* of Kine, of Sheep, or of Goats, they be reckoned as *In pecudum fructus* *t*. In the increaſe of ſuch cattel, *p* as alſo be *Lana & Fœtus*, *i.* Wooll, Calf, Kid, and Lamb, whereof mention is made in the fifth and ſixth queſtions before; and touching queſtion herein to be made, ſuppoſe of the Milk when it is perceived and taken, of the nine parts thereof (when the tenth is deducted) there be made ten Cheeſes, it is anſwered, in this Caſe, the Cheeſes are not to be Tithed: *q* for Cheeſe is not tithable but where Milk is not tithed: and ſo of the other: briefly, they be tithable either of them *tempore ſuo*, In their ſeaſons, *r* and ſo long and ſo ſoon, as either Milk or Cheeſe ſhall be perceived and taken (in their kind) by the Pariſhioner: there can be no cuſtom of intermiſſion to the contrary. Look Cuſtom, the 3. And what the Law of Cuſtom may be in this caſe, followeth here the 3.

p ff. de uſufr. l. in pecudum inſt. de re. di. *Sect.* in pecudum.

q de reg. jnn. in 6.

r c. Quoniam propter præ. de decim.

2 Sometimes theſe cattel be depaſtured in one Pariſh, and coucht in another, in this caſe it may be demanded, What the Law determineth of the tithe? It is anſwered in the text-Law, *viz.* *Quod inter Rectores dividatur*, *i.* In this caſe the Parſons ſhall divide *ſ*.

ſ c. Quoniam ut audivimus. præal. *Sect.* decima.

3 Queſtion alſo herein is moved further in Law, *t* where ſuch Tithes be payable in kind, and the number of Cattel ſo ſmall, as *Linwood* ſuppoſeth *u* of ſome one or other Pariſhioners, which have not only three, two, or, peradventure, but one only Cow, and thoſe, or that, to be Milked but *alternis diebus*, *i.* But each other day, by reaſon whereof the Pariſhioner can make no Cheeſe at all: what is the Churches Right in this caſe: It is anſwered in the Text Law *x viz. Conſuetudini locorum duximus relinquendum*, *i.* The cuſtom of the place muſt be obſerved: provided the cuſtome be, that *Certum quid ſolvatur*, *i.* that ſomewhat be paid in conſideration and lieu *y*: for cuſtom herein (as in all other caſes of tithing) cannot exclude *ſolutionem decimæ*. *i.* It cannot intirely take away the payment of the Tithes of ſuch profits as ariſe, as may appear in cuſtom the third, only it may limit *ſolutionem decimæ*, *i.* cuſtom may moderate the payment of Tithes. Look cuſtom the fourth. Hither (by a conſtitution provincial of *England*) alſo be referred Calf, Colt, Pigg, and ſuch like, that is, when their number is ſo ſmall that they cannot be Tithed: it is the Chapter *Quoniam ut audivimus*, and Paragraph *quid vero*, which conſtitution *Linwood* affirmeth upon the ſame Paragraph, that it extendeth not to the Wool and Lamb, but citeth there another expreſs and peculiar Ordinance for the ſame, *viz.* If the Pariſhioner ſhall have ſix Lambs or under, he ſhall yield for his Tithes for every Lamb a half-peny: if ſeven Lambs, he ſhall yield a Lamb for his Tithe, and receive three half-pence: if eight, a peny: if nine, the Pariſhioner (only) receiveth a half-peny of the Parſon, or the Parſon may expect according to the ſixth queſtion before. *Et ita intelligendum eſt de decima Lanæ*, *i.* The ſame Ordinance and provincial conſtitution is had of Wooll It is the Chapter *quoniam propter*, and Paragraph *De nutrimentis*, in the Title of Tithes.

t c. quoniam propter. præ. Sect. quid vero.

u in cap. &. Sect. præal. verb. modicitatem.

x c. Sect. præal in fin.

y extr. c. ti. c. in aliquibus.

4 *Poſt*

4 *Poſt feſtum, &c. i.* after the feaſt of Saint *Martin* in Winter, ſheep be eftſoons removed from Pariſh to Pariſh, or elſe they do continue in one and the ſame Pariſh from that Feaſt, till ſhearing day enſuing: the queſtion is, of their Tithes? It is anſwered, they be tithable thus, *viz. Habita ratione ad numerum ovium Paſcua eſtimentur*; *i.* The Paſture in this caſe muſt be conſidered (for want of their Milk in this ſeaſon) by the head and number of the ſheep that depaſtured in them *z* and ſo ſhall the Tithe be rated and yielded *a* by rate and proportion of time (by the month *b*) as *Linwood* inferreth, and as it is ſaid of thirty dayes, and by thirties, and ſo from thirty to thirty, as in the firſt queſtion before of Wool.

z e quoniam ut audivimus præal. *Stil.* quod ſi prov. ang. c.
a c. *ſtil* præ. c.
b Gloſſ. c. *Stil.* præal verb. eſtimentur.

The Eighth Queſtion.

Decima de { *Fructibus* / *arborum,* } *i.* Of Fruits of Trees.

1 Of Apples and other ſuch Fruits of Trees, what of their Tithable time?

The Eighth Queſtion.

1 FRuits of Trees, *viz.* Apples, Pears, Wardens, &c. the queſtion is of their Tithable time: it is anſwered, *Statim fructibus collectis, i.* So ſoon and immediately when the fruits ſhall be gathered *c.* and the Reaſon is, *quia minus ſolvit, qui tardius ſolvit, i.* He dimi-

c e. cum homines eod.

d. ſi cui in fine ff. de verb. ſig.

e c. cum homines præ. eod. text.

f c. ad Apoſtolice. c. pervenit eod.

miniſhed his dury that delayeth the time: *d* if therefore the Pariſhioner ſhall gather his Fruits, and neither pay the Tithes preſently, nor moniſh the Parſon to receive them, but ſubſtract them, or that (otherwiſe) they be impaired or loſt, *tenebitur*, ſaith the Law; that is, The Pariſhioner is Bounden; *e* to what ſatisfaction look the Statute, 2 *Ed.* 6. 13. For fruits be Tithable, and prædial *f*.

The Ninth Queſtion.

Decima de { *Seminibus*, i. Of Seeds: Hemp, Flax, Onions, Rape, and ſuch like.
Herbis, i. Of Pot-Herbs,
Curtilagiis, i. Of places adjoyning to Manſion Houſes. applyed to Seeds and Herbs.

1 Of Seeds and Herbs, what manner of Tithes they be?

The Ninth Queſtion.

SEeds and Herbs, *viz.* of Flax, Millet, Hemp, Leek, Onion, Rape, Percelly, Sage, mint, Rue, *&c.* comprehended under the words *Seminibus*, *Herbis*, *Curtilagiis*, they be tithable, *g* as they be perceived and taken in Gardens, or in the Fields, either of the Seed, or of the Herb before the ſeeding time, *h* *Niſi parochiani competentem fecerint redemptionem*, *i.* Except the Pariſhioners ſufficiently ſhall redeem or compound for the ſame. *i* Theſe be *Minutæ Decimæ*, *i.* Small Tithes according to the Evangeliſt: *k* *Ye tithe Mint and Rue, &c.* And therefore in them no great queſtion to be made.

g c. quoniam propter præ prov. ang. c.

h Concor. ext. eo. c. ex parte canonicorum

i c quoniam propter præ.

k Lu. 11. Ho. c. ex multiplici. eo.

The

The Tenth Question.

Decima de { *Pannagiis* / *Sylvarum*, } Of Maſt, or Beech, Oke or ſuch like.

1 Of Maſt, what, when it is given? and what, when it is ſold?

The Tenth Queſtion.

1 BY the Chapter *Sancta Eccleſia*, in the provincial Conſtitutions of *England*, and Title of Tithes, the Tithes of Maſt and of other ſuch Wood and Wild Fruits, be payable, *viz. Si vendantur*, *i.* If they be ſold: *l* that is, (as the gloſs inferreth) of the tenth peny, if they be ſold; otherwiſe, that is, of Swine frankly and freely received and fed, without any conſideration of Charges to the owner in this caſe *Tranſeunt fructus cum onere*, *i.* The Fruits do paſs with their charges, *m viz.* with the burthen of Tithes.

l c. Sancta eccleſia pre. *m* glo. in d.c. verb. ſi vendantur: ubi ad hoc ext. c. paſtoralis, & Inno. ext. c. commiſſum. c

The Eleventh Queſtion.

Decima de {
- *Molendinis*, i. Of Mills forced by Wind, Water, &c.
- *Vivariis*, i. Of Parks, Warrens, Pools, Ponds, &c.
- *Beſtiis guarenarum*, Of Wild Beaſts under cuſtody, &c.
- *Columbariis*, i. Dove-coats or houſes.
- *Apibus*, i. Of Bees.

1 What

1 What manner of Tithes they be? And how they be tithable?

The Eleventh Queſtion.

1 QUeſtion hath been moved of the Tithes of Mills, Parks, Ponds, Warrens, Dove Houſes, and Bees, to this effect, *viz.* Whether they be predial, or perſonal? It is anſwered, they be predial, and tithable without deduction of charges, *n* for the reaſon alledged in the fourth queſtion before. And they be tithable thus; that is to ſay, not the tenth of the Rent for Mills (as they termit) the tenth peny, nor for Bees, the tenth Bee, or ſwarm, or Hive: *De proventibus molendinorum*, *i.* The tenth meaſure of Corn for Mills; *o* and ſo for Bees, the tenth meaſure of Hony, the tenth weight of Wax, briefly, *Ce cera & melle*, *i.* Of Hony and Wax. *p* And the Law and Reaſon is of theſe tithes, eſpecially of Mills, as of other predial tithes, whereof (for example) it is ſaid, *Tranſit herba paſta cum onere ſuo ad dominum beſtiarum*, *i.* Where grounds or Paſtures be demiſed, or their herbages ſold, the owner of the Beaſts is chargeable with the tithe. *q* Eſpecially for the practice of *England*, look what is ſaid in the third queſtion before. Hither be referred Parks, Ponds, Dove-houſes, &c: for *Fructus tranſit cum onere ſuo*, *i.* Fruits be liable to their charges. Look in the ſecond queſtion before, 2.

n D D. in cap. paſtoralis & aliis ca eod.

o c. quoniam propter; præ. *Sect.* de proventibus & ibi glo. verb. integre.

p Hoſt. & alii. c. nuntios. c.

q Ad hæc. ff. de uſufr. uſufructu legato & item ſi. fundi.

The Twelfth Queſtion.

Decima de { *Aucupiis*, i. Of Fowlings. / *Venationibus*, i. Of Huntings. / *Piſcationibus*, i. Of Fiſhings.

1 Beaſts, Fiſhes, Fowls, how (diverſly) they be tithed, (diverſly) conſidered?

The Twelfth Queſtion.

1 THe profits that be mentioned and contained under the words *Aucupiis*, *Venationibus*, *Piſcationibus*, *i.* Of Fowlings, Huntings, Fiſhings, queſtions have been moved of the tithes of the ſame, *viz.* The Pariſhioners of *N.* one of them Fowleth, another Hunteth, the third Fiſheth, in the Fields, Grounds, and Rivers of *B.* The queſtion is, of the tithes, of their advantages taken, and which of the Churches be intereſſed in the ſame, *viz.* whether the Church of *N.* where the Pariſhioners inhabite; or the Church of *B.* where the profits were taken? It is thus anſwered, *viz.* If the Pariſhioner had, of the owners of the places, frank, and free liberty to Fowl, Hunt, and Fiſh, the Church of *N.* that is, their own pariſh Church ſhall be intirely intereſſed in them, as in perſonal tithes *r* but if any conſideration be required, either in Money, or in part of their gain, that profit only received by the owner, is predial and tithable to the Church of *B.* that is to ſay, in that pariſh where the Fields, Grounds, and Rivers do lie *ſ De cæteris vero*, *i.* Of the reſidue, that is to ſay, of the clear gain of theſe Beaſts, Fiſhes,

r Inno. in ca: non eſt. eod. & ibi hoſt. Verb. de venatione.

ſ Inno. in & Hoſt. cap. & verb. prædal.

Fiſhes, & Fowls, all charges and expences, in, about, belonging, and concerning theſe profits taken, deducted, *t* the pariſhioners that took them be chargeable with all to their pariſh Church of *N.* *u* mentioned before: and the reaſon is, the Fowls, Beaſts, and Fiſhes be taken *artificio, miniſterio, & opere hominis*, *i* By the Art only, Labour, and induſtry of man, from whence proceed perſonal Tithes, *x* payable only where the pariſhioners inhabit. *y* But if the conſideration mentioned here, required and taken by the owners, cometh not by Art and Induſtry, but *Ex humo, i.* By way only, and means of the ground, *z* from whence do ariſe all predial Tithes: *a* payable only in the place and Pariſhes within whoſe bounds and limits they are. *b* Thus they be divers, theſe tithes, diverſly reſpected, that is to ſay, predial or perſonal, note the difference. Note alſo, that where ſuch tithes be demanded, it is where ſuch Art, Induſtry, and Travel is anſwered and rewarded, not with pleaſure, *e* but with profit. *d* Queſtion hath further been moved of theſe profits and advantages aforeſaid, to this effect: *viz.* the Pariſhioners mentioned of *N.* had frank and free leave and liberty to Hunt, Fiſh, and Fowl within the fields, grounds, meadows, rivers, and running ſtreams of *B.* mentioned before: they took, preſerved and reſerved alive their Beaſts, Fowls, and Fiſhes, and ſo they conveyed them to certain their own proper and private Grounds within the Bounds, Compaſs, and Limits of another Pariſh, than either of *N.* where they dwell, or of *B.* where they took them: they include them (there) theſe Beaſts, Fowls, and Fiſhes, and compaſs them within Parks, Warrens, Ponds, Pools, Houſes, ſuch as be mentioned and comprehended under the words *Vivariis, Columbariis*, in the eleventh queſtion before. Thus they feed and nouriſh them, and they bred, and increaſe in their kinds: now, in that theſe incloſed and limited places do alter and change (in Law) the nature of the profits

t D.D. præal, in ca. paſtoralis eod.
u D.D. in d. c. Non. eſt ibi idem not. per. D.D præ. in decimis Avium & ferarum gloſſ. in pre c. quoniam propter. Sed. de piſcationibus provin. ang. eod. verb. debito modo
x c. ad apoſtolice. eod.
y e. q. eſt j. 16. q. 1
z Inno. Hoſt. in c. non eſt. præal eod. verb. de venatione.
a c. ad apoſtolice pervenit. pre eod.
b cap. fin. de parochiis.
c Rebuff. eod. q. 8 nu. 17.
d Ancha in præ. l. c. non eſt. col 2.
e Rebuff. eo nu 14. & 15. ad hæc Inno. & Pan. in d. c. non. eſt.

profits of the nouriſhed Creatures within them, *e* which of the Churches have right to the Tithes? It is thus anſwered, *viz.* They were included at the firſt as they were taken, that is, by Art and Induſtry of Man: *f* howbeit they increaſe not by induſtry and Art, but by the nutriment and nouriſhment of the Waters and Grounds, where they live *ex ſola gratia Dei*, *i.* Of the meer grace and bounty of God: *g* and therefore for the rate, value, and proportion of themſelves, they remain theſe profits as they were taken at the firſt, that is perſonal: Tithable to the Church of their Pariſh that took them. *h* But their increaſe is prædial, Tithable to the Church within whoſe limits they be, and be fed, and nouriſhed. *i* The circumſtances of theſe Tithes mentioned in theſe caſes, according to that worthy and of famous memory *Hoſtienſis*, do make them neither meerly prædial, nor meerly perſonal, but mixt Tithes: *k* payable notwithſtanding as predial and perſonal diverſly reſpected, as aforeſaid. So, conſider thus, (briefly) of theſe Tithes, that is to ſay, conſidered as they be included within compaſs, limits, and bounds (from their natural Liberty) tyed and reſtrained to the ſame, as in Ponds, Parks, Warrens, Houſes, and in ſuch like limited places, they be predial Tithes: but conſidered as they enjoy (at their wills) their natural liberties, as Fiſhes, the Sea; Fowls, the Air: and Beaſts, the Fields; in that that they are not reckoned of any place certain, their Tithes be not prædial but perſonal: touching therefore queſtion herein to be made, to what Churches they be due? It is anſwered, As of prædial and perſonal Tithes: that is, the one to that Church in whoſe Pariſh theſe limited places aforeſaid do lie that do make them predial; the other to that Church in whoſe pariſh the Parſon doth inhabit that maketh them perſonal. And this is the difference.

f In no & Hoſt. in d c. non eſt.

g D. D. præ. in c. c. non eſt.

h Pan. in cap. præal. & ibid. An de intellectu. Hoſtienſis ad idem.

i Pan & D. D. in d c non eſt

k Hoſt in ca. præal.

The Thirteenth Queſtion.

Decima de { *Cygnis*, i. Of Swans. / *Aucis*, i. Of Geeſe

1 Of Swans, Geeſe, Ducks, and how they be conſidered of.

1 SWans, Geeſe, and Ducks be diſtinguiſhed thus, *viz.* whether they be *Volantes*, *i.* Whether they be wild, and do flie; or be tame, or not: this conſidered, the profits be tithable accordingly: For example, the Cygnets, *Si naſcuntur in loco certo, & ſuſcipiuntur à loco certo, i.* If they be brought forth, and ſo be taken in and from a certain and known place, they be predial and tithable, as predial tithes; if from uncertain places, they be perſonal, and ſo they be tithable, *viz.* as perſonal tithes. *l* It is affirmed of them, as of Beaſts, Fowls, Fiſhes, *m* in the queſtion laſt before. Hither by the Chapters *Sancta Eccleſia*, in the Provincials of *England*, be referred Geeſe and Ducks.

l Gloſſ in c. ſancta Eccleſia præ. *Sect.* 1. ver. c. ignotum.

m D.D. ext. c. tit. c. non eſt.

The Fourteenth Queſtion.

Decima de { *Ovis*, i. Of Eggs.

1 Of Eggs, where Tithes be yielded, whether Chickens be Tithable there?

The

The Fourteenth Queſtion.

DE *Ovis*, *i.* Of Eggs, it hath been moved whether they be Tithable in ſuch places where Tithes be yielded of Chickens? By the written Law it may be anſwered, as of Milk and Cheeſe in the Seventh queſtion before, the 1. Howbeit Cuſtom in this caſe prevaileth, as experience ſheweth in ſome parts of this Land *n*.

n Gloſſ in d. e. ſancta eccleſia. cap. quoniam ut audivimus. verb. pulli.

The Fifteenth Queſtion.

Decima de { *Artificiis*, i. Of Crafts, and Manual Occupations. / *Negotiationibus* Of trades by wares, Merchandiſe, &c.

1 Of perſonal Tithes, what time, place, and perſons be required in them; and of whom the Church is forbidden to receive either perſonal Tithe, or Oblation:

The Fifteenth Queſtion.

1 TRades, Crafts, and Manual Occupations, they be perſonal, and of the profits do ariſe meer perſonal Tithes: touching therefore firſt their Tithable place, it is anſwered in the Twelfth Queſtion before. Of their tithable time it is anſwered, *in fine anni*, *i.* They be payable at the end of the year, *o* and as our cuſtom is, at *Eaſter*. Of perſons that be chargeable with theſe perſonal tithes, it is anſwered, Of ſuch perſons, which of cuſtom have or, of right ought to have paid their perſonal tithes. *p* Look the Summaries of the Statutes enſuing. There are of theſe perſonal Tithes (in divers caſes) *opinionum conflictus*,

o Gloſſ. in c. revertimini. verb. annus.

p 2. Ed. 13.

flictus. i. Diverſities of opinions: *q* but herein they agree, *viz. Hæ Decimæ perſonales, magis in difficultate, & ſubtilitate, quam utilitate conſiſtunt, i.* They are theſe perſonal tithes, more intricate than profitable: *r* only this (to conclude) muſt be noted, that is to ſay, all perſons (conſideration had, as afore is ſaid) be bounden to offer their perſonal Tithes to the Church, but the Church is forbidden (of all perſons) to receive them: *ſ* For example, the Harlot, the Robber, the Uſurer, &c. they be not exempted, but the Law rejecteth them, their perſonal tithes and oblations: *Non inferas mercedem meretricis, &c. i.* Thou ſhalt not bring the hire of a Whore, nor the price of a Dog into the Houſe of the LORD. *t* And for the other, *Quæſtus ſit ex peccato, i.* Their gain ariſeth of ſin: the Church is therefore forbidden to receive of them, *Ne ipſorum videatur approbare turpitudinem, i.* Leſt the Church ſhould ſeem to approve their iniquities *u*.

Rebuff. q. 13. nu. 44. & ibi. cit. Bur. in 3. parochianos infin. eod. *r* Hoſt. in capaſtoralis infin. eod. & Io. detur. cre. in c. revertimini præal, nu. 12. ver. ad ſeptimum. 16. q. 1. *ſ* Hoſt. in ca. ex tranſmiſſa. eod. arg. ca. Oblationes. 90. diſt. Deut. 23. *t* c. miror. 17. q. 4. *u* c. ſi tantum 6. q. 2. hæc. Rebuff. q. 5. nu. 18, 8. 19.

Here do end the Queſtions of Tithing, moved (in times paſt) and anſwered; and which be now urged (ordinarily) and decided at this day.

Of compoſition, Tranſaction, Cuſtom, Preſcription, Priviledge; and how they prevail in Tithing.

Of Compoſition:

COmpoſition (by the Canon Laws) holdeth or faileth diverſly reſpected: and it is firſt to be conſidered of, as it hath been made and had *inter Clericos, i.* Betwixt Clerks themſelves; and then it hath tended either *Tranſferendis*

Transferendis decimis, i. To the Translating of Tithes from one Church to another: *Vt quæ uni Eccleſiæ decimæ debentur, alia recipiat, i.* That one Church receive Tithes which be due to another. And the compoſition herein holdeth. *a* and the reaſon is *Non refert quæ Eccleſia decimas habeat, modo Eccleſiæ perſolvantur, i.* It forceth not of Tithes (ſo the Church enjoy them) what Church receiveth them. *b* Howbeit, the nature and kind of the Tithes thus tranſlated, muſt be conſidered, namely, whether they be perſonal or predial Tithes; if they be perſonal, the compoſition that tranſlated them holdeth not, and the reaſon is, *Ne occaſio tribuatur vagandi & divina extra parochiam audiendi, i.* Leſt occaſion ſhould be given to the people, of wandering, and hearing of Divine ſervice from their own Pariſh Churches *c.*

a c.2.d.tranſ. c. dilecti.c.

b c. 13. eod.

2 If they be predial, the compoſition holdeth, *Inita cum authoritate epiſcopi, i.* The Authority and Approbation of the Biſhop of the Dioceſs thereunto had; which compoſition ſhall bind both the Clerk and his Succeſſors: *d* otherwiſe without the Biſhops confirmation, it ſhall only bind the Clerk that yielded thereunto, and not touch his Succeſſours at all *e.*

c c.2.ſup.ti.1. Rebuff. in q. 13 un.17.de decim.

d c.2.&c.veniens de tranſ.

e c.veniens 8. præal.

3 Or the compoſition hath tended *Remittendis decimis, i.* To the remitting of Tithes, *Vt tota decima Clerico remittatur*, namely, That to a Clerk Tithes ſhould be intirely remitted, this compoſition holdeth not, *f* and the reaſon is *Decima omnino tolli non poteſt, i.* Tithes may not wholly be taken away *g*?

f Rebuff. q.13. nu 27.de decim.

4 Secondly, Compoſition muſt be conſidered, as it hath been ſaid, *Inter Laicos, & Rectorem, i.* Betwixt Laymen and Clerks, which compoſition alſo muſt be reſpected thus, namely, whether it be *De præteritis decimis, i.* Of tithes forepaſſed; or *de futuris decimis, i.* Of tithes to come; In the firſt caſe, this compoſition alſo holdeth, yea, though it

g q nu.præ. Rebuff.

it be *Gratuita*, *i.* Without conſideration or allowance at all: *h* In the ſecond caſe, if the compoſition be, *Vt aliquas decimas non ſolvant*, *i.* That Tithes be not paid at all, *Non eſt admittenda*. *i.* Not to be admitted, *i* If the compoſition be, *Vt integra decima non ſolvatur*, *i.* That Tithe be not wholly paid, but in part; it holdeth: howbeit not otherwiſe but confirmed by Authority Supream: for the Biſhops confirmation herein ſufficeth not, for none could exempt from Tithing, or diminiſh the quantity of the ſame, but the Supream power, *k* as it followeth in priviledge.

h c. ſuper. de reb. eccle. non alien.

i Rebuff. q. 13. præal.

k Text in oa. venerabilis de conſeſ. & ibi Pan.

Of Tranſaction.

TRanſaction and Compoſition do differ in this, the one is *Gratuita conventio*, *i.* A voluntary, frank and free agreement of things not contended for, which is ſaid to be compoſition: the other, *de re dubia & lite incerta (aliquo dato vel retento) pactio*, *i* A forced Covenant or Agreement (for ſomewhat given or received) of things litigious, in certain, and doubtful, in controverſie *l.*

l ff. de tranſ. C. c. c. ſuper. eo.

2 It muſt be conſidered of Tranſaction as before it hath been ſaid of Compoſition betwixt Lay-men and Clerks. Look, Compoſition 4. Tranſaction (if it be of Tithes fore-paſſed) holdeth; yea, though the conſideration had, be of things meer temporal: and the reaſon is, *Fructus decimarum ſunt temporales*, *i.* The profit and fruits of tithes be reputed temporal. *m* Tranſaction, if it be of tithes to come, muſt be reſpected according to the time and term it is made for, namely, whether it be made *in tempus modicum*,

m veſtra. de loce.

dicum, *i.* for a ſhort and limited time; or *in perpetuum*, *i.* (without limitation) for ever. In the firſt caſe it holdeth with the Biſhops approbation and authority: *n* in the other caſe it holdeth alſo if the right and intereſt of the Church be doubtful, as where the Pariſhioner pleadeth againſt the Church, Exemption or Priviledge. But where the right of the Church is *Liquidum*, *i.* where the Churches right is clear, Tranſaction holdeth not otherwiſe than by conſent and authority ſupream, *o* Tranſaction is often taken for compoſition, and one for another *p*.

n Arg. c. 2. & 3. ſup. de iis quæ fiunt a capit.

o Nor. c. nobis eod. Pan. c. ſtatuimus de tranſ-

p c. venien. c.

Of Cuſtom.

CUſtom by the Canon-Laws holdeth or faileth, diverſly reſpected: if it be, *De transferendis decimis predialibus*, *i.* of tranſlating of tithes prædial (as afore hath been ſpoken in compoſition) it holdeth *q*.

q c. cum ſint homines. &c. ad apoſtolic. eod.

2 If of perſonal Tithes, as alſo before hath been ſaid in compoſition, it holdeth not *r*.

r c. præal.

3 Cuſtom *De non ſolvendis decimis*, *i.* Of not yielding of Tithes at all, holdeth not, and the reaſon is. *Juri naturæ & divino contraria eſt*, *i.* Such a cuſtom is contrary both to the Law of Nature, and Law of GOD *ſ*.

ſ DD. id c. fi. de conſuetud.

4 Cuſtom *De minori quantitate ſolvenda*, *i.* Of yielding leſs than the tenth in quantity, holdeth *in Perſonalibus*, *i.* in perſonal Tithes only, after the opinions of ſome, *t* but of others in predial alſo; *u* and practiſe alſo ſheweth the ſame.

t c. in aliquibus. & ubi inno. pan. & alii eod.

u Rebuff. q. 13. nu. 46.

5 Cuſtom *De loco*, *i.* Of places where Tithes ought to be left, holdeth *x*.

x Hoſt in ſum. *Sect.* fin. eod.

6 Cuſtom *De tempore*, *i.* Of the time of Tithes to be yielded, holdeth *y*.

y D. D. in. ad. apoſtolic. præal.

7 Custom *De modo*, *i.* Of the manner and form of yielding of Tithes, holdeth *z*.

z Rebuff. q 13. præal. nu. 40 50. 52.

Tithe, what it is, and of how many sorts.

Tithe of the Latine, Decima, *is, a tenth part or portion of Increase, commanded unto* Moses *by whom it was delivered (at the appointment of God) to be paid to the Sons of* Levi, *for their Ministery wherein they served in the Tabernacle* [a] *: in Law defined thus ; viz.* Omnium bonorum licite quæsitorum quota Pars Deo, divina constitutione, debita, *i. Of all lawful increase and gain a certain part (by constitution Divine) due, and appertaining to God* [b] *. And they be either Prædial, as that which doth arise & grow by reason & virtue of the grounds, viz. Fruits, and increase of Beasts, Fishes, Fowls,* [c] *&c. Or they be personal, as that which ariseth by reason and vertue of lawful and honest commodity, so recovered and procured by art, science, or manual Occupation of some Person* [d] *. It is also to be noted, that Tithes, some of them comprehended under these titles, Prædial and personal, be called by the name of mixt Tithes, of which sort be such as do rise and grow partly by the grounds, and partly by the care, keeping, labour, and industry of some Person;* [f] *as of Cattel subject to the Fox, Wolf, and such devouring Beasts, supposed to be partly of the grounds where they be bred and fed,* [g] *even as a tree is supposed to be also partly of that place where the roots do grow, by the which it is nourished:* [h] *so they be maintained by the grounds, but defended by the shepherds.*

a Numb. 10.

b Card consil 26. pro evidentia. c. tua c fin. ead. c c. pervenit. præal. e c. non est. 22. c.

d c. ad apostolice. præal. e cs. commissum præal. f apostolice. c. pastoralis. eod. g l. cum quidam ff. de fun. instruct. h l si plures in fin. ff. a. b. furt cæs.

Look

Look more of mixt tithes in the twelfth queſtion. Some of them by the name of greater Tithes, In Latine Majores ſive groſſæ decimæ (*as we term them*) *Great Tithes: ſuch be of Corn and Pulſe i. Some of them be termed* Minores *or* Minutæ decimæ, (*in our common ſpeech*) *Small Tithes. ſuch be Seeds, Herbs, Eggs, & &c. mentioned in the ninth and fourteenth queſtions*, 1.

i c. ex multiplici de dec. k Glo: & DD. in c cum ex tua. & c. ex multiplici. præal. eod.

Of Preſcription.

PReſcription is not ſo much differing from Cuſtom, as before is ſpecified of Tranſaction and Compoſition: but the one oftentimes is taken for the other. *a* Howbeit herein they differ, *Conſuetudo proprie dicitur quando ejus ac quiritur in communi & publico, i.* It is properly ſaid to be cuſtom where a right to many is procured in common and publick; *Preſcriptio vero quando privato, i.* Preſcription when privately to one *b*.

a Dom. ca. 2. col. ult de preb. in 6. barb. conſil. 35. ſapienter. col. 6. in 2. vol. b Pan. in ca. cum eccleſia. col. 8. nu. 45. de cauſ. peſ.

Of Priviledge.

PRIVILEDGE or Exemption is derived from Authority Supream, by the which, *ex juſta cauſa, i.* upon cauſe and good conſideration, ſometimes the perſons themſelves, as the order called *Cſtiercienſes*, and other Religious perſons, were priviledged and exempted from Tithes, *c* ſometimes the places, as grounds belonging to

c a nobis de decim.

d c. ex parte eod.

Religious perſons. *d* For example, Monaſteries, Priories, Nunneries, Colledges, &c. or other Eccleſiaſtical Houſes, &c. or any Manors, Meſſuages, Parſonages Appropriate, &c. or other Hereditaments which belonged unto the ſaid Monaſteries, Priories, &c. which were diſcharged of and for the payment of Tithes, being in the hands of Abbots, Priors or other Eccleſiaſtical Governours. Concerning theſe poſſeſſions in Religious perſons, there have been five ſeveral times obſerved: *e* but leaving thoſe times I refer the Readers only to the Statute, *viz.* Theſe Monaſteries, &c. And every perſon and perſons, their Heirs and Aſſignes, having &c. ſhall be according to their Eſtates and Titles diſcharged of payment of Tithes, in as ample manner as any of the ſaid Abbots, &c. at the dayes of their diſſolution, 31 H. 8. 13.

e Rebuff q. 14 nu. 37, 38, 39, 40, 42.

Summaries of the Statutes of Tithing.

EVery of the Kings Subjects ſhall truly and juſtly without fraud or guile divide, ſet out, yield and pay, all manner of their predial Tithes, in their proper kind, as they riſe and happen in ſuch manner and form as hath been of right yielded and paid within forty years before the making of this Act (being *November.* 4. *Anno* 1548.) or of Right or Cuſtom ought to have been paid. And no perſon ſhall take or carry away any ſuch or like Tithes, &c. before he hath juſtly ſet forth for the tithe thereof the tenth part of the ſame, or otherwiſe agreed for the ſame Tithes with the Parſon, &c. under the pain of forfeiture of treble value of the Tithes ſo taken and carried away, 2 *Ed.* 6. 13.

At

At all times whenſoever the ſaid prædial Tithes ſhall be due at the tithing time of the ſame, it ſhall be lawful to every party to whom any of them ought to be paid, or his Deputy or Servants to ſee their ſaid Tithe to be truly ſet forth, and ſevered from the nine parts, and the ſame quietly to take and carry away, 2 *Ed.* 6. 13.

If any perſon carry away his Corn or Hay, or his other prædial Tithes, before Tithe thereof be ſet forth, or willingly withdraw his Tithes of the ſame, or of ſuch other things whereof prædial Tithes ought to be paid, or do ſtop or let the Parſon, Vicar, &c. or other their Deputies to view, take, and carry away their Tithes, by reaſon whereof their ſaid Tithe or tenth is loſt or hurt: then upon due proof thereof, &c. the party ſo carrying away, &c. ſhall pay the double value of the tenth, &c. beſides the coſts, charges and expences of the ſuit in the ſame, &c. to be recovered before the Eccleſiaſtical Judge, according to the Kings Eccleſiaſtical Laws, 2 *Ed.* 6. 13. Double value of the tenth beſides coſt.

Every perſon which ſhall have any beaſts or other cattel Tithable, going or feeding in any waſt or common ground, whereof the Pariſh is not certainly known, ſhall pay his Tithes for the increaſe of the ſaid cattel, to the Parſon, Vicar, &c. of the Pariſh, Hamlet, Town, or other place where the owner of the ſaid Cattel, dwelleth, 2 *Ed.* 6. 13. Waſt ground not certainly known of what Pariſh.

All ſuch barren Heath and Waſte Ground, &c. which before this time hath been Barren and paid no Tithes by reaſon of ſuch barrenneſs, and ſhall be improved and converted into Arable ground or Meadow, ſhall, after the end of ſeven years next after ſuch improvement, pay Tithe for the Corn and Hay, growing upon the ſame: But if ſuch barren, &c. hath before, &c. been charged with payment of any Tithes, and the ſame be after improved, and converted into Arable ground or Meadow, then the owner thereof ſhall, during ſeven years next following from waſt grouud improved that never paid Tithe. Waſt grourd improved that paid Tithe before.

from and after the ſame improvement, pay ſuch kind of Tithe as was paid for the ſame before the ſame improvement, 2. *Ed.* 6. 31.

Sylva Cædua. Great wood of the age of twenty years or of greater age, ſold to Merchants to their own profit, or in aid of the King in his Wars, is not Tithable nor comprehended under this word *Sylva Cædua*, 4 *Ed.* 3. 3.

Perſonal Tithes. Every perſon Exerciſing Merchandiſe, Bargaining and Selling &c. or other Art or Facultie, being ſuch kind of perſons and in ſuch places as heretofore within theſe fourty years, have accuſtomably uſed to pay ſuch perſonal Tithes, or of right ought to pay (other than ſuch as be common day-labourers) ſhall yearly, &c. pay for his perſonal Tithes, the tenth part of his clear gains, his charges and expences, &c. deducted. But in all ſuch places where Handicrafts men have uſed to pay their Tithes, &c. the ſame cuſtom of payment of Tithes ſhall be obſerved and continued, 2 *Ed.* 6. 13.

Offerings. Every perſon which ought to pay Offerings ſhall (Yearly) truly pay them to the Parſon, Vicar, &c. at ſuch four offering days, &c. as have been accuſtomed for the payment of the ſame; and in default thereof to pay for the ſaid offerings at *Eaſter* then next following, 2 *Ed.* 6. 13.

Wales. No tithes of marriage goods ſhall be required of any perſon within *Wales*, or the marches thereof. Neither ſhall any perſon be compelled to pay tithe for the lands or heriditaments, which by the Laws and Statutes of this Realm, or by any Priviledge, or Preſcription, are not chargeable with the payment thereof: or that be diſcharged by compoſition real, 2 *Ed.* 6. 13.

Obſtinacy. If any perſon after ſentence definitive given againſt him, obſtinately refuſe to pay his Tithes, or ſhall otherwiſe contemn and diſobey the proceſs and decrees of the *Eccleſiaſtical* Courts, &c. then upon information given, &c. the ſame party

party ſhall be committed to ward, &c. 27 *H.*8.20. Look the ſtatute in all. Contempt.

If any of the parties do appeal, &c. then the Judge forthwith ſhall adjudge to the other party the reaſonable coſts of his ſuit therein before expended, and take ſurety of the other party, &c. To what effect, ſee the ſtatute in all. 32 *H.* 8.7. Appeals.

If any party, &c. do ſue for any prohibition, &c. under the copy of the Libel ſhall be written the ſuggeſtion whereof the party ſo demandeth the ſaid prohibition: and in caſe the ſaid ſuggeſtion by two honeſt and ſufficient witneſſes at the leaſt, be not proved true in the Court where the ſaid prohibition ſhall be ſo granted, within ſix months next following, &c. Then the party that is hindered of his ſuit in the Eccleſiaſtical Court by ſuch prohibition, &c. ſhall have a conſultation granted, &c. and ſhall alſo recover double coſts and damages, 2 *Ed.*6.13. And the Judges before whom the cauſe was firſt brought to queſtion ſhall proceed notwithſtanding the Kings prohibition, 24 *Ed.*1. Prohibitin. Conſultation.

Theſe be Summarily (Chriſtian Reader) the ſpiritual and ſtatute Laws of the Land for Tithing: *this is the work, take it in good part: the title but begun, may better be ſatisfied hereafter.*

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